



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

**OCT 09 2018**

George L. Berish

Honolulu, HI 96814

RE: MUR 7431

Dear Mr. Berish:

The Federal Election Commission reviewed the allegations in your complaint received on July 17, 2018. On October 2, 2018, based upon the information provided in the complaint, and information provided by the respondents, the Commission decided to exercise its prosecutorial discretion to dismiss the allegations as to Honolulu Civil Beat, Inc., and close its file in this matter. Accordingly, the Commission closed its file in this matter on October 2, 2018. A copy of the Factual and Legal Analysis, which more fully explains the basis for the Commission's decision, is enclosed.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 52 U.S.C. § 30109(a)(8).

Sincerely,

Lisa J. Stevenson  
Acting General Counsel

A handwritten signature in black ink, appearing to read "Jeff S. Jordan", written over a printed name and title.

BY: Jeff S. Jordan  
Assistant General Counsel

Enclosure

Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

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3 RESPONDENTS: Honolulu Civil Beat, Inc. MUR 7431  
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5 This matter was generated by a Complaint alleging violations of the Federal Election  
6 Campaign Act of 1971, as amended (“the Act”) and Commission regulations by Honolulu Civil  
7 Beat, Inc. It was scored as a low-rated matter under the Enforcement Priority System, by which  
8 the Commission uses formal scoring criteria as a basis to allocate its resources and decide which  
9 matters to pursue.

10 The Complaint alleges that Honolulu Civil Beat made an in-kind contribution by  
11 publishing one Senate candidate’s answers to the newspaper’s questions about political issues  
12 before it published the answers from another nine candidates, including the Complainant.<sup>1</sup>  
13 Honolulu Civil Beat responds that it is a non-profit online newspaper and is covered by the  
14 media exemption.<sup>2</sup>

15 The Act and Commission regulations exclude from the definitions of “contribution” and  
16 “expenditure” the cost incurred in covering or carrying a news story, commentary, or editorial by  
17 any broadcasting station, newspaper, Web site, magazine, or other periodical publication,  
18 including any Internet or electronic publication, unless such facilities are owned or controlled by  
19 any political party, political committee, or candidate.<sup>3</sup>

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<sup>1</sup> Compl. at 1-2 (July 17, 2018).

<sup>2</sup> Resp. at 1 (Aug. 2, 2018). It further explains that it asked approximately 275 candidates running for office in Hawaii to fill out questionnaires, and publishes approximately six each day so that readers are not overwhelmed by the number of articles posted on a single day. *Id.*

<sup>3</sup> 52 U.S.C. § 30101(9)(B)(i); *see also* 11 C.F.R. §§ 100.73 (excluding bona fide news coverage from the definition of “contribution”); 100.132 (same as to the definition of “expenditure”). The Commission uses a two-step analysis to determine whether the media exemption applies. First, the Commission considers whether the entity in question is a media entity, focusing on whether the entity produces, on a regular basis, a program that disseminates news stories, editorials, and/or commentary. Factual and Legal Analysis at 5-6, MUR 7206 (Bonneville International Corp., et al.) (“Bonneville F&LA”); Advisory Op. 2016-01 (Ethiq) at 2 (“AO 2016-01”); Advisory Op.

1           The available information shows, and Complainant admits, that Honolulu Civil Beat  
2 regularly publishes news stories and there is no information to suggest that it is owned or  
3 operated by a political party, political committee, or candidate. It appears that when Honolulu  
4 Civil Beat published the candidates' answers, it was operating within its legitimate press  
5 function. Therefore, the Commission finds no reason to believe that Honolulu Civil Beat, Inc.  
6 violated the Act and Commission regulations.

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2010-08 (Citizens United) at 2 ("AO 2010-08"). Second, the Commission considers two factors in determining the scope of the exemption: (1) whether the press entity is owned or controlled by a political party, political committee, or candidate; and, if not, (2) whether the media entity is acting as a media entity in conducting the activity at issue (*i.e.*, whether the entity is acting in its "legitimate press function"). Bonneville F&LA at 5; AO 2016-01 at 3; AO 2010-08; AO 2010-08 at 3. With respect to the second factor, when determining whether an entity is engaging in a legitimate media function, the Commission examines (1) whether the entity's materials are available to the general public; and (2) whether they are comparable in form to those ordinarily issued by the entity. Bonneville F&LA at 6-7; AO 2016-01 at 3; AO 2010-08 at 6.